IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.710/2003

Qayyum Ali S/o Kazam Ali
Versus
State of Rajasthan through the Public Prosecutor

Date of Judgment :::: 25th May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Anshuman Saxena, Counsel for accused-appellant
Smt. Nirmala Sharma, P.P., for the State
####

By the Court:-

The only contention raised on behalf of the appellant by his learned counsel Shri Anshuman Saxena is that looking to the quantity of the contraband recovered in the present matter, the sentence of imprisonment and fine awarded by the trial court is excessive and the same may be reduced.

The Special Judge. N.D.P.S. Cases, Jaipur, vide its judgment and order dated 21.3.2003, in Sessions Case No.10/2002, convicted the accused-appellant under Section 8/21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act') and sentenced him to undergo four years and six months rigorous imprisonment and a fine of rupees twenty-five thousand; in default of payment of fine, to further undergo one year additional rigorous imprisonment.

The learned counsel Shri Anshuman Saxena, appearing on behalf of the appellant, has not challenged the order of conviction passed by the trial court against the appellant, therefore, it is not necessary to refer and discuss the facts of the prosecution case, in detail.

The charge against the appellant was that contraband i.e. smack weighing 41.600 gram was found in his possession, which was recovered by the Recovery Officer in the present case on 19.1.2002.

The learned counsel for the appellant contended that the NDPS Act was amended by the Parliament by the Act No.9 of 2001 with effect from 2nd October, 2001, and vide Notification No.S.O.1055(E), Dated 19.10.2001, which came into force with effect from 2nd October, 2001, the small and commercial quantity have been specified in a Table appended with the NDPS Act. Item No.56 relates to heroin/smack (Diacetylmorphine). According to this Notification, the small quantity has been notified as 5 gram and the commercial quantity as 250 gram. He contended that under clause (a) of Section 21 of the NDPS Act, it is prescribed that where contravention involves small quantity, an accused shall be punished with rigorous imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both;

and, under clause (b) thereof it is prescribed that where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, an accused shall be punished with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees. He, therefore, contended that maximum sentence of imprisonment under clause (a) of Section 21 of the NDPS Act is prescribed as 6 months, whereas under clause (b) no minimum sentence of imprisonment is prescribed but maximum sentence of imprisonment is prescribed as 10 years RI. He also referred the judgment of this Court in S.B. Criminal Appeal No.315/2004 (Zahid Noor S/o Ahmed Noor Vs. State of Rajasthan through Public Prosecutor), delivered today i.e. 25.5.2007, wherein the contraband i.e. smack weighing 90 gram was recovered from the possession of accused therein and looking to the quantity of contraband he has been awarded sentence of 4 years and 6 months RI with fine of Rs.1,00,000/-; in default of payment of fine, to further undergo 6 months RI and, on that basis, the learned counsel contended that in the present case the quantity of contraband is only 41.600 grams, therefore, in the present case the sentence of imprisonment and fine be reduced reasonably.

The learned Public Prosecutor contended that the accused-appellant has already completed his

substantive sentence of imprisonment of 4 years and 6 months, but he could not be released from jail as he did not deposit the amount of fine and is now undergoing the sentence of imprisonment awarded in lieu of default in making the payment of amount of fine, therefore, no useful purpose will be served in reducing his sentence of imprisonment.

I have considered the submissions of learned counsel for both the parties and examined the impugned judgment passed by the trial court.

It is apparent from the record that the appellant has already remained in jail from 19.1.2002 to 20.5.2002 (i.e. 4 months and 1 day) and from 20.3.2003, the date of judgment of the trial court, till date (i.e. 4 years 2 months and 4 days), therefore, he has already remained in jail for a total period of about 4 years 6 months and 5 days till now, therefore, I do not think it fit and proper to reduce the substantive sentence of imprisonment of four years and six months awarded by the trial court, but, after considering all the facts and circumstances of the present case, I think it fit and proper to reduce the sentence of fine from Rs.25,000/- to Rs.10,000/- and, in default of payment of fine, to further undergo additional two months rigorous imprisonment.

Consequently, the appeal is partly allowed. The order of conviction passed by the trial court against

the appellant is maintained as the same has not been challenged by the learned counsel for the appellant. The order of the trial court awarding sentence of imprisonment of 4 years and 6 months rigorous imprisonment is also upheld. However, the order of sentence of fine passed by the trial court is modified to the extent that the appellant shall deposit the fine of Rs.10,000/- (Rupees ten thousand only); in default of payment of fine, to further undergo two months additional rigorous imprisonment. The learned counsel for the appellant was given an option to seek time to deposit the amount of fine so release order of the appellant may be passed today itself, but he contended that the appellant is a very poor person and is not in a position to deposit the amount of fine. Therefore, it is directed that the appellant shall now be released on completion of his two months period of rigorous imprisonment awarded in lieu of payment of fine. However, it is made clear that in case the appellant deposits the amount of fine, then he will be released forthwith.

(Narendra Kumar Jain) J.

//Jaiman//